UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

v. 18 CR 419 (GHW)

MARCOS ELIAS,

Sentence

Defendant.

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New York, N.Y.
July 25, 2019
9:45 a.m.

Before:

HON. GREGORY H. WOODS

District Judge

APPEARANCES

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
SAGAR K. RAVI
Assistant United States Attorney

ERIC J. SNYDER
SAMIDH GUHA
Attorneys for Defendant

Interpreter (Portuguese): ALEX LADD

Also Present: JOE STRAWMAN - Special Agent FBI
CAROLYN LEFEVER - Paralegal, U.S. Attorney

(Case called)

THE CLERK: Counsel please state your names for the record.

MR. RAVI: Good morning, your Honor. Sagar Ravi for the United States. I'm joined at counsel table by Special Agent Joseph Strawman of the FBI and Carolyn Lefever, a paralegal in our office.

THE COURT: Thank you very much. Good morning.

MR. SNYDER: Good morning, your Honor. For Mr. Elias, Eric Snyder and Samidh Guha from Jones Day.

THE COURT: Thank you very much. I'm sorry for starting late this morning. Thank you for your patience.

We are here to conduct a sentencing hearing for Mr. Marcos Elias. Let me note for the record that we are using the services of an interpreter here today. Mr. Elias please let me know if you have any difficulty hearing or understanding anything that is said by the interpreter here.

I have received and reviewed the following materials in connection with this sentencing:

First, the pre-sentence report, which is dated March 28, 2019;

Second, the defendant's sentencing memorandum, which is dated April 11, 2019, together with its exhibits;

Third, the government's sentencing memorandum, which is dated April 18, 2019;

Fourth, the letter from the victim witness coordinator of the United States Attorney's office for the Southern District of New York, which is dated April 19, 2019, and the attached victim statement;

Fifth, the letter from defendant with respect to issues raised for a Fatico hearing dated as of June 29, 2019, together with its exhibits;

Sixth, the government's letter with respect to issues raised for our Fatico hearing dated as of June 29, 2019;

Seventh, the letter from defendant with respect to issues raised from the Fatico hearing which is dated as of July 1, 2019, together with its exhibits;

Eighth, the defendant's supplemental sentencing memorandum which is dated July 11, 2019, together with its exhibits; and

Ninth, the government's supplemental sentencing memorandum, which is dated July 18, 2019;

Tenth, the defendant's supplemental sentencing submission which is dated July 24, 2019, together with its exhibits, which consist of financial statements by the defendant not previously provided to the probation office.

Counsel, have each of the parties received all of those materials?

MR. SNYDER: Yes, your Honor.

MR. RAVI: Yes, your Honor.

THE COURT: Thank you. Have each of the sentencing memoranda been filed with the clerk of the court? I would like to ask in particular with respect to this question what the basis is for the requests that I see in the defendant's supplemental sentencing memorandum under seal. First, counsel for the United States, have the government's sentencing memoranda been filed with the clerk of the court?

MR. RAVI: Yes, your Honor. They were filed electronically.

THE COURT: Good. Thank you.

Counsel for defendant, but for the supplemental sentencing memorandum, your sentencing memoranda have been filed on the docket, as I understand it. What is the basis for the request that I file under seal the defendant's supplemental sentencing memorandum?

MR. SNYDER: It was to protect the cooperator, your Honor. It was our practice, is our practice, that we don't want to reveal anything that could put a cooperating witness with the government in any kind of harm or danger.

THE COURT: Is he a cooperating witness?

MR. SNYDER: Mr. Evandro dos Reis.

THE COURT: Understood. I will grant the request for that reason, which I think is adequate justification for me to provide the request to file that material under seal.

Let me turn first to counsel for the United States.

Are there any other submissions in connection with this sentencing?

MR. RAVI: No, your Honor.

THE COURT: Counsel for defendant, are there any other additional submissions in connection with the sentencing?

MR. SNYDER: No, your Honor.

THE COURT: Thank you. Counsel for defendant, let me turn to you. Have you read the pre-sentence report?

MR. SNYDER: Yes, your Honor.

THE COURT: Have you discussed it with your client?

THE DEFENDANT: Yes.

THE COURT: Mr. Elias, let me turn to you. You can remain seated until I ask you to stand. That's fine. Mr. Elias, have you read the pre-sentence report?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you discussed it with your counsel?

THE DEFENDANT: Yes, I did.

THE COURT: Have you had the opportunity to review with your counsel whether there are any errors in the pre-sentence report or whether there were any other issues with the pre-sentence report that should be addressed by the Court?

THE DEFENDANT: Yes, I had the opportunity.

THE COURT: Let me turn to counsel for the United States. Counsel for the United States, have you read the pre-sentence report?

MR. RAVI: Yes.

THE COURT: Do you have any objections related to the factual accuracy of the pre-sentence report?

MR. RAVI: No, your Honor.

THE COURT: Thank you.

Counsel for defendant, do you have any objections related to the factual accuracy of the pre-sentence report?

MR. SNYDER: No, your Honor.

THE COURT: Thank you. Given that there are no objections to the factual recitations in the pre-sentence report, the Court adopts the factual recitations in the pre-sentence report. The pre-sentence report will be made part of the record in this matter and will be placed under seal. If an appeal is taken, counsel on appeal may have access to the sealed report without further application to the Court.

Although district courts are no longer required to follow the advisory sentencing guidelines, we are still required to consider the applicable guidelines in imposing sentence. To do so, it is necessary that we accurately calculate the advisory sentencing guidelines range.

In this case the defendant pleaded guilty to Counts One and Four of the superseding indictment in this case. Count One charged him with conspiracy to commit bank fraud in violation of 18 U.S.C. section 1349. Count Four charged him with aggravated identity theft in violation of 18 U.S.C.

section 1028A(a)(1), 1028A(b), and 2.

Counsel for the United States, does the government agree that a 2-level adjustment is appropriate here, under section 3E1.1A?

MR. SNYDER: Yes, your Honor.

THE COURT: Is the government moving for an additional 1-level adjustment under section 3E1.1(d)?

MR. RAVI: Yes, your Honor, on the basis that the defendant assisted in the prosecution of his own misconduct by timely notifying the government of his intention to enter a guilty plea.

THE COURT: Thank you. I calculate the sentencing guidelines in a manner consistent with the plea agreement in the pre-sentence report. The applicable Sentencing Guidelines Manual is the November 1, 2018, Sentencing Guidelines Manual incorporating all guidelines amendments.

The guidelines sentence for Count Four is the minimum term of imprisonment required by statute. Therefore, I do not consider it separately in the guidelines calculation.

Pursuant to section 2B1.1A, the base level for the offense charged in Count One is 7. Because the loss reasonably foreseeable to the defendant was greater than $550,000 but not more than $1,500,000, 14 levels are added to the base level pursuant to section 2B1.1(d)(1)(H).

Because a substantial part of the fraudulent scheme

was committed from outside of the United States and the offense otherwise involved sophisticated means, and the defendant intentionally engaged in or caused the conduct constituting sophisticated means, 2 offense levels are added pursuant to section 2B1.1(d)(10)(B) and (C). Because the defendant has demonstrated acceptance of responsibility for his offense through plea allocution, apply a 2-level reduction pursuant to section 3E1.1(a). Upon motion by the United States, an additional 1-level reduction is warranted under section 3E1.1(b).

As a result, the applicable guidelines offense level for the offense charged in Count One is 20.

The defendant has no criminal history points. As a result, the defendant is in criminal history category I.

I have considered whether there is an appropriate basis for departure within the guidelines system. While I recognize that I have the authority to depart, I do not find any grounds warranting a departure under the guidelines. In sum, I find that the offense level for Count One is 20 and that the defendant's criminal history category is I. Therefore, the guidelines range for Count One is 33 to 41 months of imprisonment. The guidelines range for Count Four is 24 months' imprisonment.

Does either party have any objections to the sentence guidelines calculation?

MR. RAVI: No, your Honor.

MR. SNYDER: No, your Honor.

THE COURT: Thank you.

Let me turn to counsel for defendant. Counsel, do you wish to make a statement with respect to sentencing?

MR. SNYDER: I do, your Honor.

THE COURT: Please proceed.

MR. SNYDER: Your Honor, at the outset, the defendant and the government agree that the argument here today applies only to Count One, and to Count One in a vacuum. There are two bases for your Honor to apply a downward variance in the sentence, a nonguidelines sentence, and both are legally cognizable. First is the family hardship factors. Next is the acceptance of responsibility and cooperation with the government by Marcos Elias.

First his family issues, your Honor. Mr. Elias has three sons all under the age of 13. As your Honor can see from the letters that have been submitted from his sons, his ex-wife, and his friends and family in Brazil, Mr. Elias has been a very important presence in the life of his sons.

One of his sons, his middle son, your Honor, has autism, is on the autism spectrum, has special needs. It seems from the reading of this, the letters that were submitted, that Mr. Elias is potentially uniquely capable of helping his middle son struggle with this disability.

Any sentence that is imposed by your Honor is extremely burdensome to these boys in that they don't have the ability to visit with their dad, to see their dad, and can only have very minimal contact through phone calls with their father while he serves a sentence in the United States.

On the second basis that your Honor has to vary downward, Mr. Elias, in what is unique and extraordinary and not likely to come before the Court again in this matter, Mr. Elias, after he pled guilty and after he learned about the government's view of the facts here, offered to meet with the government, to be interviewed by the U.S. Attorney and the FBI, without any protection, offered to correct the facts that they had, correct their understanding of what had happened.

He did so without any protection. There was no proffer letter. There was no protection for him. He also didn't understand or have any basis to believe he could benefit from this. And he had no reason to be dishonest. In fact, he was truthful throughout what was a four-hour meeting with the FBI in the U.S. Attorneys on May 2nd of this year.

The government recognized that this was rather unprecedented and they accepted it as a gesture of good faith, that he was willing to come in without any protection. They listened to him for four hours. And after that meeting, on May 3rd, the following day, they confronted Mr. dos Reis, Evandro dos Reis, for the first time. From a review of everything,

they confronted him for the first time about whether he had received any of these proceeds.

So not only did Mr. Elias cooperate without any protection and provide information to the government, the government used that information and they used it to confront their cooperator, and now it's changed their understanding of the facts.

Your Honor, we heard you loud and clear on July 2nd that you do not need to resolve any factual issues to sentence Mr. Elias. We understand the Court and we take the Court's direction. But with the Court's indulgence, if I can walk through some of his cooperation efforts. While the facts of what he said are not necessary for your Honor to resolve, there are facts that are not in dispute that your Honor can consider in applying a downward variance.

He offered to be interviewed by the government post-plea. He did so with no protection and no reason to convey information that was not true. The government acknowledged that this was highly unusual and unprecedented. Then Marcos Elias authorized myself and Mr. Guha to be fully transparent with the government regarding our investigation and diligence in reviewing all the material that we received from the government in preparation for what would be a Fatico hearing.

The government benefited from our review, our

diligence, in identifying certain documents that were corroborating Mr. Elias's account, such as that he gave money to Mr. dos Reis. We provided an email that corroborated what Mr. Elias said, and they used that as well to confront Mr. dos Reis, using not just the words in the proffer of our client, but while they had them in their possession and say they have reviewed it, they didn't identify the key documents about that one fact in particular, just for example. They have now used that information to correct their representation to the Court that they made in their April 18th submission.

Those two bases your Honor can use to apply a downward variance from the guidelines sentence. We would ask you to do it on those bases as well as the fact that Mr. Elias is not a citizen and, because of his immigration status, will serve in a much more difficult environment any sentence that your Honor imposes.

Quite frankly, he won't be eligible for a prison camp that he would have been eligible for if he had status in this country. So, instead of serving in a prison camp, a fenceless environment, he is now going to serve in a very much increased high-security setting, which involves searches and lockdowns and double razor wire fences. He is even potentially going to serve in a private prison facility, which brings other hardships to the inmates of those facilities. Then he is going to serve additional time even after completing any sentence

your Honor imposes.

What we are asking for is on Count One that your Honor take into account his cooperation, which you can under Fernandez absolutely, and apply it in any way you deem appropriate, and to sentence Mr. Elias to probation on Count One. And then, as the law demands, to give him the appropriate sentence on Count Four.

Thank you, your Honor.

THE COURT: Thank you.

Let me turn to Mr. Elias. Mr. Elias, do you wish to make a statement to the Court?

THE DEFENDANT: May I? I want.

THE COURT: Please proceed if you would like. You can speak in Portuguese and the interpreter will translate your words. Proceed as you feel most comfortable.

THE DEFENDANT: I just want to say that I'm sorry, that I apologize to my family, to the Court, to the victims of the conduct. While Evandro and I thought it was a victimless crime at the time, I understand it was no less wrong. No amount of money is worth the separation from my family. I have endured and I will endure to the completion of my sentence. More than anything, I want to complete my sentence and return to my family and live a lawful, productive life to make up for the time I have missed them.

Just this.

THE COURT: Thank you very much.

Counsel for the United States, does the government wish to be heard with respect to sentencing?

MR. RAVI: Yes, your Honor.

THE COURT: Thank you. Please proceed.

MR. RAVI: Your Honor, the government agrees with the probation department here that a significant term of imprisonment within the guidelines range is appropriate. Actually, to quote the probation department, they said it was "warranted and justified." Probation also agreed that there do not appear to be any factors which would warrant a sentence outside of the guidelines range.

I would like to respond to a couple of arguments relating to the nature and circumstances of the offense that were made in the sentencing submissions to emphasize a few points.

The defendant in their submissions has sought to portray Mr. Elias's crime as a lapse of judgment, that it was aberrational. But this case is tragic in many ways because the defendant here had the benefits of studying at Brazil's most prestigious institutions. He had achieved financial success at a number of well-known financial institutions. He had managed the assets of some of the Brazil's wealthiest families, and he had the privilege to live in one of the most high-class neighborhoods in Sao Paolo Brazil.

But despite all of this, the defendant decided to commit multiple acts of fraud over an extended period of time in 2014. This was no lapse of judgment. It was greed. It's as simple as that.

Looking at the sentencing factors, and specifically the nature and circumstances of the offense, the seriousness of the offense, and the need for judgment, the defendant was involved in all aspects of this fraud, from the beginning through the end.

He registered two fake email accounts in the victim's name. He registered a domain name that appeared to be looking like the company's name in order to make it appear more legitimate. He directed the creation of a Panama company in order to open a Luxembourg bank account to receive the fraudulent funds. He forged two sets of wire instructions using the victim's signature and the logo of the company, and then he invested and laundered that money in Luxembourg back to where he was in Brazil.

Despite all that, he also took steps to hide his tracks. When the fraud was developed and it was disclosed that it was known, the defendant closed the Luxembourg account, dissolved the Panama company, and deleted his email account before the government could get a search warrant on it. When we received the return, it said the account was deleted.

This was no simple scheme or single mistake. It

involved multiple sophisticated acts of identity fraud, including the creation of shell companies and email domains, all to facilitate the fraud.

Then, despite succeeding in stealing three-quarters of a million dollars, the defendant did not stop his criminal conduct and continued with it. About five months after he was successful at stealing the $750,000, the defendant attempted to steal even more money by targeting accounts at a second financial institution, using the names of the victim as well as members of the victim's family. He continued to forge documents and also conducted multiple acts of identity theft there.

The defendant only pled guilty to one count of identity theft. So the record is clear, there were multiple counts of identity theft to which he could have been found guilty.

Perhaps most importantly, your Honor, the defendant was the primary, if not the sole, beneficiary of this fraud.

Turning a little bit to the history and characteristics of this defendant, the government does not doubt the letters of support that the defendant has received from friends and family relating to the good acts that he has done. But defense counsel has emphasized throughout their submissions that the defendant committed this crime out of desperate need to support his family.

Considering the history and the characteristics of this defendant, the Court should also consider the fact that the defendant committed this crime despite, as is undisputed in the PSR, he was earning at least six figures in the years leading up to the fraud. He had sold a company in the year that the fraud occurred. He was also living in a house that was worth well over a million dollars at the time that this fraud occurred. That is reflected in the financial affidavits that were submitted yesterday.

It is also important to note that when the defendant stole this money and got it into the account at Luxembourg, he didn't immediately transfer and spend it on what appeared to be necessary expenses for his family. That money was invested. It wasn't transferred out until May of 2015, approximately 11 months after the fraud had occurred. So this is not a case about someone stealing a modest sum of money in order to help the family. Mr. Elias stole $750,000 and tried to steal even more money.

Finally, your Honor, with respect to the points of general deterrence and the need to promote respect for the law, the government cannot overemphasize the importance of those factors here given the pervasiveness of identity theft, which causes not only great financial harm to victims like those here, but, as the Court saw in the victim impact stated, it also eroded some of the trust in the financial institution that

was a victim here as well.

I believe the Court should consider all of those factors.

Now turning to the defendant's two kind of reasons for a downward variance. With respect to the purported cooperation that the defendant is seeking to get credit for, just as the defendant has no right to a cooperation agreement from the government, the Second Circuit made clear in Fernandez that a defendant is not entitled to any credit from the court for any cooperation or attempted cooperation. It's up to the Court's discretion.

If you look at all the non-Second Circuit cases cited by the defendant in his submission where there was a discussion of how the court considered the cooperation that was proffered by the defendant, each of those lower courts declined to grant a below-guidelines variance based on the defendant's proffered cooperation.

There should be no credit here, your Honor. I think the Court has already recognized as much through its comments at the Fatico hearing that it is not apparent that a cooperation agreement would be warranted under these circumstances, and for really two reasons that I think are most important.

First, the defendant did not provide any new material information to the government that it could use to determine

whether or not Mr. dos Reis had violated his cooperation agreement by making false statements. Defense counsel makes reference to the fact that the government confronted Mr. dos Reis regarding information that Mr. Elias had proffered as well as certain documents.

To be clear, your Honor, all those documents that defense counsel had said he gave to the government, those were documents the government already had in its possession and had already reviewed them. It is entirely a normal process for the government to confront a cooperating witness when there are allegations that they made false statements regarding anything in the record.

Defense counsel also indicated that his purported cooperation somehow changed the government's view of the facts here or that it caused the government to correct the record with respect to any issue. I, frankly, am not quite clear what defense counsel is referring to, your Honor. It looked like he was referring to the fact that Mr. Elias had said that Mr. dos Reis received proceeds of this fraud. The government has yet to find corroboration for the fact that Mr. dos Reis received fraud proceeds as part of his compensation for facilitating this fraud.

In fact, in the document that the defendant attached to his supplemental sentencing submission, in that email it shows that the 13,000 that Mr. Elias is referring to is

actually relating to a crowd funding investment.

Your Honor, I have another email here as well that I would like to present to the Court, since this seems to be an issue. I already gave defense counsel a copy of it. Government Exhibit 55 is what it was marked as for the Fatico hearing.

If you look at the English translation of this document, on page 3 there is an email from Marcos Elias on September 23, 2014, where he writes to Mr. dos Reis pursuant to the English translation, "Would you be able to find a way to do the accounting of the USD 13,000 that I gave to you as pre-operational expenses for the crowd funding project?"

Your Honor, we of course continue to confront a cooperator, as the government always does, like it did in this case, especially since there was a Fatico hearing that the government wanted to prepare for. But Mr. dos Reis in his first substantial proffer back in October 2015 discussed the fact that he received some money from Marcos Elias after the fraud and that it was for a crowd funding investment. The dispute is whether or not Mr. dos Reis received money as proceeds of fraud as compensation for his involvement in the fraud. There has been no corroboration of Mr. Elias's account on that.

The second reason the Court should not provide any cooperation credit here is, based on the government's

submission, the government has not credited Mr. Elias in large part because there is not corroboration for his account here. The government provided some examples in its sentencing submission for the Court to consider.

For all those reasons, your Honor, the government submits that the probation department's recommendation here of a guidelines sentence on Count One is appropriate and sufficient but not greater than necessary to achieve the purposes of sentencing.

THE COURT: Thank you.

I'll give the defense the opportunity to make any arguments in rebuttal if you would like. First, I'm marking the document that the government has handed to me as Court Exhibit A for purposes of this proceeding. It is a series of emails marked as Government Exhibit 55, with an English translation of the emails attached as Exhibit 55A.

Counsel for defendant, is there anything you would like to say relating to the government's remarks?

MR. SNYDER: Yes.

THE COURT: Please proceed.

MR. SNYDER: Your Honor, first, as to the argument that it was greed, Mr. Elias was very generous with the church. The lion's share of the money he had went to prepay tuition at the religious school for his boys, which was suffering from financial difficulties. He prepaid their tuition for a number

of years.

When he engaged in this, he was struggling financially. He admits fully it was absolutely wrong. He takes full responsibility for that. But it is not greed. It was foolishness in giving money that he shouldn't have been giving to his church and to his children's school and to other causes that he was committed to.

As to the second argument, though, your Honor, this has nothing to do with a 5K1 letter. We are not arguing the facts here, your Honor. Your Honor made that clear. We do not have to argue resolved facts here. If the government chose to give him a 5K1 letter, we would not be having this discussion today.

What Fernandez says, and Fernandez is exactly on point here, is that your Honor may consider such cooperation efforts by Mr. Elias in imposing a variance. Mr. Sagar wrote to your Honor on April 18, "It is not in dispute that every penny of the over $750,000 stolen from the company went to Elias." He then went on to say, "The cooperating witness," Mr. dos Reis, "did not receive any of the fraud proceeds." He said that on April 18th.

That's what brought us to the whole Fatico issue. We asked him to correct that statement. We told him it was not accurate. We brought in Mr. Elias to explain to him that he, Mr. Elias, gave 15,000 in U.S. cash in an envelope to dos Reis.

Although they had this material, your Honor, they just hadn't noticed the relevant emails.

We then went through all this 3500 material four years after they started the investigation. We identified these emails to show and corroborate that Mr. Elias was telling the truth. We gave them those emails from our diligence, diligence that they didn't put into reviewing this material. It was then, first on May 3rd, after talking to Mr. Elias, and then subsequently, after we gave them these documents, that they confronted dos Reis about the money and dos Reis admitted to receiving the money from Mr. Elias.

It doesn't matter, your Honor, what the government chooses to believe. It doesn't matter if they want to say that the money that dos Reis received in an envelope in Sao Paolo was not the proceeds. Frankly, we are not here to argue that.

What we are trying to ask your Honor to do is to recognize that cooperation, to recognize that the government used his cooperation, used the documents we gave them to -- maybe they haven't corrected the record -- to change what they know about whether or not Mr. dos Reis received money from this fraud.

Your Honor can recognize that cooperation and apply a variance not just for the cooperation's sake and how it may have helped the government and the Court perhaps to understand the facts better, but it also goes to his remorse. It goes to

Elias's rehabilitation, that he has come forth taking full responsibility and was willing to sit and tell the government where they had it wrong and, frankly, came in on July 2nd, your Honor, prepared to testify to the Court about that.

I think your Honor can consider that and should consider it under Fernandez. What you want to do with it is up to you, but you are certainly permitted to consider that. Thank you, your Honor.

THE COURT: Thank you very much.

Is there any reason why sentence should not be imposed at this time?

MR. RAVI: No, your Honor.

MR. SNYDER: No, your Honor.

THE COURT: Thank you. I will now describe the sentence that I intend to impose. Counsel will have a final opportunity to make legal objections before the sentence is finally imposed.

As I have stated, the guidelines range applicable to Count One is 33 to 41 months of imprisonment. The guidelines sentence for Count Four is 24 months, which must run consecutive to any other sentence that I impose. As counsel has recognized, the Court may not consider the mandatory minimum sentence for Count Four when determining the appropriate sentence with respect to Count One.

I have considered the guidelines range and sentence in

this matter.

Under the Supreme Court's decision in Booker and its progeny, the guidelines range is only one factor that I must consider in deciding the appropriate sentence. I'm also required to consider the other factors set forth in 18 U.S.C. section 3553(a). These include:

First, the nature and circumstances of the offense and the history and characteristics of the defendant;

Second, the need for the sentence imposed to (a) reflect the seriousness of the offense, to promote respect for the law, and to provide a just punishment for the offense, (b) to afford adequate deterrence to criminal conduct, (c) to protect the public from further crimes of the defendant, and (d) to provide the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner;

Third, the kinds of sentences available;

Fourth, the guidelines range;

Fifth, any pertinent policy statement;

Sixth, the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

Seventh, the need to provide restitution to any victims of the offense.

Ultimately, I am required to impose a sentence that is

sufficient but not greater than necessary to comply with the purposes of sentencing that I mentioned a moment ago.

I have given substantial thought and attention to the appropriate sentence in this case, considering all of the 3553 factors and the purposes of sentencing as reflected in the statute. Based on a review of all of those factors, which I will discuss in more detail in a moment, I intend to impose a nonguidelines sentence of 18 months of incarceration for Count One and 24 months of incarceration for Count Four, with each of those terms to be served consecutively.

The term of incarceration will be followed by 2 years of supervised release. I do not expect to impose a fine. I expect to order restitution. I will impose the mandatory fee of $100 for each of the crimes of conviction. I am going to discuss each of those issues with more specificity after I review my reasoning.

Let me begin with the nature of the offense. Mr. Elias's crime was very serious. He conspired to steal over three-quarters of a million dollars and worked over a period of time to implement a sophisticated scheme to defraud his victim. Mr. Elias's co-conspirator, Mr. dos Reis, sent Mr. Elias confidential information regarding an inactive account held by Companhia Zaffari Comercio e Industria using his personal email account.

Shortly thereafter, an individual falsely claiming to

be an employee of Zaffari sent Mr. dos Reis instructions on Zaffari letterhead with Paul Hanat's forged signature to transfer funds from the Jeffries account to an account in the name of Carroll Gardens.

When that request was rejected because the recipient account did not have the Zaffari name in it, an individual falsely claiming to be a Zaffarian employee sent Mr. dos Reis's instructions on Safari letterhead directing that the funds be sent to an account in the name of Zaffari Com. Ind. Corp. at a different bank. That wire went through.

Two weeks after Zaffari notified Jeffries of the fraud, Mr. Elias requested that the account to which the funds had been transferred be closed and that the funds be transferred to other accounts.

Mr. Elias's fraud did not end with the Jeffries account. Perhaps inspired by that opportunity, Mr. Elias later sent Mr. dos Reis an email with the names of accounts that he believed the Zaffari family held at Morgan Stanley. Mr. Elias then provided a retired NYPD officer working with the pair forged a power of attorney purporting to be from another member of the Zaffari family.

So, Mr. Elias's crimes were very serious. They involved the theft of over three-quarters of a million dollars. They were sophisticated, involving the creation of false bank accounts internationally, the forgery of documents, and

identity theft. This is a very serious offense, and I believe the sentence must take the seriousness of his offense into effect and to punish him for it.

Mr. Elias is 48 years old. He was born in Sao Paolo in Brazil in May 1971. He has had in many ways many benefits. Mr. Elias had a good childhood in middle class conditions. His father was a salesman while his mother stayed home. When he was 17 Mr. Elias's father lost his job, which led to a period of what I understand to be stress and abuse. It also led Mr. Elias to find his first job, if I recall correctly, as a tutor.

I have read all the letters that have been submitted to me on Mr. Elias's behalf. It is clear that Mr. Elias has many important and powerful relationships, that his siblings are still close to him, that his mother is still living. Sadly, his father passed away too soon from a heart attack.

Mr. Elias, while divorced from his wife after an 18-year marriage in 2018, still has strong support. And he has three children who were 11, 9, and 5 at the time the PSR was prepared. I recognize that he is an important, very important, part of their lives, particularly of the life of his middle son.

Mr. Elias is currently in a committed relationship with his partner. I have read all the many letters submitted on behalf of Mr. Elias, and I recognize the many good things that he has done. I know from them that Mr. Elias is much

loved and supported by his friends and family and that he has worked to have a positive impact on many.

So, in many ways Mr. Elias comes to me with many benefits that many people who sit before me for sentencing do not. Yet despite those, he is here for stealing three-quarters of a million dollars.

Mr. Elias lived nearly his entire life in Brazil and has essentially no ties to the United States apart from his MBA, which I will speak about momentarily. A detainer has been issued against him by ICE. Mr. Elias is blessed with good physical health. He suffered from anxiety for the past ten years or so and has been treated for the condition by a psychiatrist, who has prescribed medication to treat his symptoms. Mr. Elias has no reported history of substance abuse issues.

Mr. Elias's life has been a picture of success in many ways. He has a college degree in mechanical engineering, an MBA from the University of Pittsburgh. He took Ph.D classes in math in Brazil but did not complete his thesis.

He has held a series of significant positions in the financial industry which have made him relatively well to do. He ran a research firm from 2009 to 2014. He ultimately sold that business to Agora. From 2014 to 2016 he owned and operated a money management company called Guiar Investments. From 2016 to 2018 he operated an asset management company

called Mobena Capital.

Mr. Elias reported that he earned only $150,000 a year in the first of those jobs and that he earned $100,000 a year at his last two firms. That is what he has reported. As noted, Mr. Elias has only recently provided the Court with his financial information, which suggests that he has very limited assets at this point.

Mr. Elias has no prior convictions for criminal conduct.

I believe that an important sentence, a meaningful sentence, is important in this case in order to impose a just punishment. I am required to consider the deterrent effect both on Mr. Elias personally and also the need for general deterrence, to impose a sentence that will prevent orders from committing similar offenses.

Unfortunately, I believe that there is some real risk that Mr. Elias will be tempted to recidivate. I recognize that in some ways this may have been a crime of opportunity that was seized after Mr. dos Reis made the Zaffari information available. But once engaged in the crime, Mr. Elias went all in, developing a sophisticated infrastructure to implement his crime and looking for opportunities to do still more.

I understand that Mr. Elias ultimately committed this crime out of what his counsel has characterized as financial motivation. Whether that is distinct from pure greed is less

clear to me.

I fear ultimately that whatever financial motivation it was that may have led him to this crime will persist after he is released. The pressure may be greater if his clients and his financial advisory business look unfavorably on his willingness to lie, falsify documents, and to secrete money in foreign accounts.

There are a number of factors that I hope would reduce the risks of recidivism here, including his maturity, his commitment to his children and family, and his education and professional history. Unfortunately, all of those factors existed at the time that Mr. Elias decided despite those things to steal money to meet financial obligations that he wanted to fulfill.

I recognize too that Mr. Elias is likely to be deported following this offense, but I cannot ignore in this calculus the fact that Mr. Elias was physically located in Brazil when he committed this crime. So I believe that there is some need for personal deterrence in this case. I am also required to consider the goal of general deterrence. I hope that by imposing this meaningful sentence it will dissuade orders from committing the offense.

I have considered Mr. Elias's ability to use the period of incarceration for educational and vocational training, medical care, and other correctional treatment in the

most effective manner. Given Mr. Elias education, job history, and health, I believe that this factor weighs against a longer incarceratory sentence.

I have considered the kinds of sentences available. I believe that a sentence with a meaningful term of imprisonment is appropriate. I have given serious consideration to the guidelines and the policy statements. I believe that a nonguidelines sentence is appropriate in this case with respect to Count One. My determination rests on a balancing of all of the purposes of sentencing based on my assessment of the facts that are before me as set forth in 18 U.S.C. section 3553.

I would like to highlight just a handful of the reasons that drive my downward variance here.

First, I recognize that Mr. Elias has important family responsibilities in Brazil. A downward variance is warranted as a result of that fact. I understand that Mr. Elias is expected to be deported following his term of incarceration. That fact and the prospect of immigration detention following his term of incarceration also contributes to my decision to vary downward here. I also recognize that he has no prior criminal history. And, as I noted before, the defendant's health, educational, and job history have weighed in favor of a lesser incarceratory sentence here.

I have considered the defendant's arguments regarding his asserted cooperation with the United States by his offer to

provide information about his co-conspirator. I have considered them, and I appreciate and understand the nature of this task that Mr. Elias undertook in order to provide that information. While I have considered those facts, I have given them very little weight.

Mr. Elias did not provide information regarding crimes unknown to the United States. He provided information that, if credited, would enhance the culpability of his co-defendant with respect to the crimes for which Mr. Elias has already taken responsibility. I should note that I have the same view regarding this issue if the version of events that Mr. Elias describes is true as if they were not, which is why those are issues that the Court is not considering in connection with the sentencing and is not affecting sentencing here.

I do look, however, to the nature of the steps that he undertook in order to provide information to the United States. As counsel has argued frequently, cooperation is a signal of remorse and rehabilitation. It may be that Mr. Elias provided information regarding his co-conspirator for purely positive motivations signaling remorse and rehabilitation, to unburden himself in a pure drive for the truth, but he may too have been motivated by more sordid motives, namely, to avenge himself for the cooperation provided and by trying to enhance the sentence imposed on the cooperating co-conspirator.

So it is less clear in this circumstance, given the

nature of the information, that the conduct by Mr. Elias reflects remorse and rehabilitation as opposed to other motivations. For those reasons the argument has been considered by the Court in sentencing, but I have accorded it little weight. I note again that this is my view regardless of the truth of the statements made by Mr. Elias. Those are not facts that I take into account in sentencing.

Similarly, I have considered defendant's argument that the Court take into account the possible disparity between the placement of Mr. Elias, a white collar criminal from abroad, and a white collar criminal from the United States. I accord that some but very little weight. It has contributed in only a very small way to my decision to vary downward here, but I have considered the argument.

what I have not considered is the fact of Mr. Elias's identity theft sentence which is mandated by statute. Disregarding that sentence, as I must, I cannot conclude that a sentence of less than 18 months is appropriate for the type of offense that was committed by Mr. Elias that is the subject of Count One.

I have considered the need to avoid unwarranted sentence disparities.

Having considered all of the 3553(a) factors and purposes of sentencing set out in the statute, I believe that this sentence is appropriate for the defendant under these

circumstances.

I have considered the need to provide restitution to any victims of the offense. This factor weighs in favor of a lesser sentence in this case. And I have considered its effect in determining the appropriate sentence for Mr. Elias. That factor has also contributed to my decision to vary downward from the guidelines range with respect to Count One in this case.

With that, Mr. Elias, can I ask you to please stand. Thank you.

Mr. Elias, it is the judgment of this Court that you will be sentenced to 18 months of imprisonment for Count One and 24 months of imprisonment for Count Four, with each of those terms to be served consecutively.

Following your term of imprisonment, I'm sentencing you to a term of 2 years of supervised release for Count One and 1 year of supervised release for Count Four, with those terms to be served concurrently.

The mandatory conditions of supervised release shall apply. They are the defendant shall not commit another federal, state, or local crime; the defendant shall not illegally possess a controlled substance; the defendant shall refrain from the unlawful use of a controlled substance; the drug testing condition is suspended due to the Court's determination that the defendant poses a low risk of future

substance abuse.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The standard conditions of supervised release 1 through 12 shall apply. In addition, the following special conditions shall apply. The defendant shall submit his person, residence, place of business, vehicle, and any property or electronic devices under his control to a search on the basis that the probation officer has reasonable suspicion that contraband or evidence of a violation of the conditions of the defendant's supervised release may be found.

The search must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to search pursuant to this condition.

The defendant shall provide the probation officer with access to any requested financial information. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule. The defendant shall obey the immigration laws and comply with the directives of immigration authorities.

The defendant shall be supervised in his district of residence.

There will be no fine because the probation department reports that you are unable to pay one. The defendant must pay to the United States a total special assessment of $100 for each of the crimes of conviction, for a total of $200, which shall be due immediately.

Counsel for the United States, I understand government is not seeking forfeiture in this matter. Is this correct?

MR. RAVI: We are, your Honor. There is a consent preliminary order of forfeiture that was entered by Judge Swain on February 4, 2019, ECF number 35. I can hand that up to the Court.

THE COURT: Please do.

I have been handed the consent preliminary order of forfeiture and money judgment which was executed by Judge Swain on February 4, 2019. It has been executed by, it appears, all of the parties and counsel for defendant. The document is on the docket at docket number 35.

I will include in the final judgment forfeiture in the amount set forth in the order entered by Judge Swain. It provides for forfeiture in the amount of $752,384.57. I will, again, order forfeiture as provided in the consent preliminary order of forfeiture and money judgment as part of the judgment in this matter.

I have also been handed a form order of restitution which orders that the defendant pay restitution in the total

amount of $938,367.87 to the identified victim of the offense. I understand that both of the parties have reviewed the order of restitution and have no objection to it. I'm entering the order of restitution now, and I am ordering, by it and now verbally, that the defendant pay restitution in the amount of $938,367.87 to the victim that is identified.

If the defendant is engaged in a BOP non-UNICOR work program, the defendant shall pay $25 per quarter toward the criminal financial penalties. However, if the defendant participates in the BOP's UNICOR work program as a grade 1 through 4, the defendant shall pay 50 percent of his monthly UNICOR earnings toward the criminal financial penalties consistent with BOP regulations currently at 28 CFR section 545.11. Any payment that is not payment in full shall be divided proportionately between the victims named. In this case there is only one.

The remainder of restitution shall be paid in monthly installments of at least 10 percent of the defendant's gross monthly income over a period of supervision to be commenced 30 days after the date of the defendant's release from custody. The defendant shall notify the United States Attorney for this district within 30 days of any change of mailing or residence address that occurs while any portion of the restitution remains outstanding.

Counsel, does either of you know of any legal reason

why the sentence shall not be imposed as stated? Counsel for the United States?

MR. RAVI: No, your Honor.

MR. SNYDER: No, your Honor.

THE COURT: Thank you.

The sentence as stated is imposed. I find that sentence to be sufficient but not greater than necessary to comply with the purposes of sentencing set forth in 18 U.S.C. section 3553(a)(2).

Thank you very much, Mr. Elias. You can be seated.

Mr. Elias, you have the right to appeal your conviction and sentence except to whatever extent you may have validly waived that right as part of your plea agreement. The notice of appeal must be filed within 14 days of the judgment of conviction. If you are not able to pay the costs of an appeal, you may apply for leave to appeal in forma pauperis. If you request, the clerk of court will prepare and file a notice of appeal on your behalf.

Counsel, are there any other applications at this time?

MR. RAVI: Your Honor, at this time the government moves to dismiss all open counts.

THE COURT: Counsel for defendant, what is your position on that request?

MR. SNYDER: No objection, your Honor.

THE COURT: Thank you. I am dismissing any and all open counts against the defendant.

Any other applications?

MR. SNYDER: Yes, your Honor. In light of the availability of direct flights from Sao Paolo to Newark and the driving distance from Newark to the Allenwood facility, if your Honor would think it appropriate, we would ask your Honor to make a recommendation to the BOP that the sentence that Mr. Elias serve be at the Low facility at the Allenwood detention center.

THE COURT: Thank you. I'm happy to include a recommendation that Mr. Elias be placed at Allenwood on the basis of its proximity to Newark, which, as you proffered, has many flights that are direct to Sao Paolo. However, I am not willing to include a recommendation that Mr. Elias be placed at a particular security designation at that facility. That is a determination that will be made by the BOP and which the Court has insufficient information to provide a meaningful recommendation.

So, I'll be happy to include in the judgment a recommendation that he designated to Allenwood, but I will not include a recommendation that he be placed in the Low facility. Does that change your request?

MR. SNYDER: It doesn't, your Honor. I apologize. I shouldn't have requested the facility designation as much as

just the facility itself. But thank you, your Honor.

THE COURT: Thank you. I'm happy to include that in the judgment.

Anything else before we adjourn? Counsel for the United States?

MR. RAVI: No. Thank you, your Honor.

THE COURT: Thank you.

Counsel for defendant?

MR. SNYDER: Nothing else for Mr. Elias, your Honor, thank you.

THE COURT: Thank you very much. This proceeding is adjourned.

(Adjourned)